



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
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DA 04-1250

Released: April 30, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF ALASKA COMMUNICATIONS SYSTEMS GROUP, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-159

Comments Due: May 14, 2004

Reply Comments Due: May 21, 2004

On April 14, 2004, Fox Paine & Company, LLC (Fox Paine) and Alaska Communications Systems Group, Inc. (ACS) (collectively, Applicants) filed an application, pursuant to sections 63.03 and 63.04(b) of the Commission's rules,¹ requesting approval to transfer control of ACS, which provides domestic telecommunications services under section 214 of the Act.²

Applicants assert that the proposed transaction is eligible for presumptive streamlined treatment under section 63.03(b)(2)(iii) of the Commission's rules because the proposed transaction will result in ACS having a market share in the interstate, interexchange market of less than 10 percent; the transferee would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and Applicants are incumbent local exchange carriers that have fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide, and no overlapping or adjacent service areas.³

Fox Paine is a Delaware limited liability company that does not own or operate telecommunications facilities. Fox Paine controls 66 percent of the equity interest in ACS.

¹ 47 C.F.R. §§ 63.03, 63.04, *see* 47 U.S.C. § 214.

² Applicants are also filing an application for consent to transfer control of authorization for international and wireless services. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

³ Letter from Leonard A. Steinberg, General Counsel, Alaska Communications Systems Group, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-159 (filed April 26, 2004).

Applicants state that Fox Paine is not affiliated with any other domestic telecommunications services providers.

ACS is a Delaware corporation that owns and operates telecommunications facilities in Alaska. ACS and its operating subsidiaries possess blanket section 214 authorizations to provide domestic switched, private line, data and business services to all interstate points. ACS's subsidiaries include: ACS of Anchorage, Inc., an incumbent local exchange carrier operating in and around Anchorage; ACS of Alaska, Inc., an incumbent local exchange carrier operating in and around Juneau, Fort Wainwright and Eilson Air Force Base; ACS of Fairbanks, Inc., an incumbent local exchange carrier operating in and around Fairbanks; ACS of the Northland, Inc., an incumbent local exchange carrier operating in and around numerous small communities and villages in various parts of Alaska; ACS Long Distance, Inc., an interexchange carrier offering long distance and interexchange private-line services as a facilities-based carrier in Alaska; and ACS Internet, Inc., an Internet service provider that offers dial-up and dedicated DSL Internet access in Alaska.⁴

The proposed transfer of control is part of a recapitalization transaction by which Fox Paine will relinquish control over ACS by reducing its equity interest in ACS to less than 35 percent of ACS's voting equity. Fox Paine will not retain any right to appoint members of the board of directors of ACS or any special management, voting or approval rights as a shareholder of ACS. ACS will assume ultimate corporate control over its subsidiaries. As part of this proposed transaction, ACS proposed to make an underwritten public offering of Income Deposit Securities, or IDSs, and a separate offering of new senior subordinated debt securities (the Notes) issued by ACS and guaranteed by substantially all of its subsidiaries. Each IDS is a unit comprised of a share of newly-issued class A common stock of ACS and a Note. The net proceeds of the offerings, together with a portion of the cash on the ACS balance sheet, would be used to pay down certain existing indebtedness of ACS, pay fees and expenses and finance a *pro rata* cash payment to the existing ACS stockholders in the reclassification.

At the time of the closing of the offerings, ACS intends to undertake a reclassification of its common stock outstanding prior to the offerings pursuant to the terms of section 242 of the General Corporation Law of Delaware (the Reclassification). As a result of the Reclassification, each share of ACS common stock outstanding immediately prior to the consummation of the Reclassification will be reclassified into a combination of cash and shares of newly-issued class B common stock of ACS (the Class B Common Stock). Pursuant to the terms of the Class B Common Stock (i) a portion of the shares of Class B Common Stock issued in the Reclassification will be subject to pro rata redemption from the net proceeds to ACS of any exercise of the option granted by ACS to the underwriters to purchase additional IDSs (identical to those sold to the public in the underwritten offering) from ACS to satisfy over allotments in the offerings (the Redemption); (ii) specified portions of the shares of Class B Common Stock

⁴ Second Letter from Leonard A. Steinberg, General Counsel, Alaska Communications Systems Group, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-159 (filed April 26, 2004)

not so redeemed will be exchanged into IDSs (identical to those sold to the public in the underwritten offering) on the 12th day following the closing of the Reclassification (the Initial Exchange); and (iii) any remaining shares of Class B Common Stock issued in the Reclassification will be exchanged into IDSs (identical to those sold to the public in the underwritten offering), subject to certain conditions, on the second anniversary of the closing of Reclassification. The shares of Class B Common Stock remaining outstanding after giving effect to the Redemption and the Initial Exchange will be equal to 10 percent of ACS's overall equity capitalization.

Applicants contend that the proposed transaction is in the public interest. Applicants argue that the proposed transaction will not reduce the number of competitors in the marketplace but will strengthen ACS's ability to provide quality local and long distance telephone services to Alaska. Specifically, Applicants state that the proposed transaction would lower ACS's cost of obtaining capital and deleverage its consolidated assets. Moreover, the Applicants assert that the proposed transaction would also ease ACS's future access to the equity and debt capital markets. Therefore, Applicants conclude that the transaction would strengthen the finances of ACS, and thereby improve its ability to serve the public and compete in the marketplace.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before May 14, 2004 and reply comments on or before May 21, 2004.**⁵ Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31st day after the date of this notice.⁶ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address> ". A sample form and directions will be sent in reply.

⁵ See 47 C F R § 63.52(b)

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov;
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dennis.johnson@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: julie.veach@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: ckillion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com

For further information, please contact Tracey Wilson, at (202) 418-1394, or Dennis Johnson at (202) 418-0809.

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